IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1266 of 2005.

Reserved on: 16.06.2007.

Decided on: 18.07.2007.

Dilwar Ram Thakur. … … Petitioner.

Versus

Union of India and others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner: **Mr. B.N. Gupta, Advocate.**

For the Respondents: **Mr. M.A. Khan, Central Govt. Counsel.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in the Army on 28th December, 1974. He was down graded to low medical category "CEE (Temp) for 3/12 years by classified specialist with effect from 27th January, 1991 due to disease "Thoracic Outlet Syndrome (Right)" and on review he was continued in low medical category and was placed in medical category BEE (Permanent). He was promoted to the rank of Naib Subedar with effect from 21st November, 1995 and on review he was not upgraded to

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Whether reporters of local papers may be allowed to see the judgment? Yes.

medical category and was transferred to pension establishment. He had rendered 26 years and 4 days service in the Army. He was granted service pension by Principal Controller of Defence Accounts (Pension), Allahabad. He was medically examined by duly constituted medical board on 6th June, 2001. His disability viz. "Thoracic Outlet Syndrome (Right) was assessed at 20% for life, but neither attributable to nor aggravated by the service factors. His case was forwarded to Principal Controller of Defence Account (Pension), Allahabad. The claim of the petitioner for disability pension was turned down on 3rd October, 2001. He had also served legal notice upon the respondents which was replied on 8th November, 2005.

Mr. B.N. Gupta had strenuously argued that his client is entitled to disability pension and he could not be transferred to pension establishment and was required to be transferred under Rule 13 Item (III) (ii) of the Army Rules, 1954, more particularly, when his disability has been assessed at 20% for life. Mr. M.A. Khan had supported the decision dated 3rd October, 2001.

I have heard the parties and gone through the record carefully.

It is evident from the above noted facts that the petitioner was enrolled in the Army on 28th December, 1974. He was hale and hearty at the time when he joined the Army and had contracted the disease "Thoracic Outlet Syndrome (Right)" and the same would be deemed to have been arisen during the service as envisaged by Rule 7(b) of the Defence Instructions governing the disability pension as contained in letter dated 18.4.1950 and amended by letter dated 1st October, 1951. Rule 7(b) is quoted below:-

> **"In respect of disease, the following rules shall be observed:-**

(a) xxx xxx xxx

(b) A disease which had led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service."

The petitioner was medically examined on 27th June, 1991 and it is stated in the summary and opinion of classified specialist Cardiothoracic Surgeon that the petitioner had suddenly developed severe pain coldness and paralysis of the (RT) upper limb on 24th April, 1991 and was diagnosed to have acute vascular insufficiency of the (RT) upper limb. In Part-II of (Opinion of the Board) as per Annexure P-2, it is mentioned that the disability was contracted in service and over which he had no control. It is stated in the opinion that it was not attributable directly to conditions of service and it has not aggravated during the service.

One thing is clear from the opinion that the petitioner had contracted the disease in service over which he had no control and the same is attributable to conditions of service in view of Rule 7(b) as quoted above. He was also placed under category "CEE (Temporary) Physical" on the basis of the opinion of the Board. He had put in 26 years and 4 days' service and was medically examined by the duly constituted Medical Board on 6th June, 2001 and his disability was assessed at 20% for life. The petitioner at the time of enrollment in service was physically fit and it was on account of stress and strains of Army service he suffered the disability. In view of this, the petitioner was

to be placed under Rule 13 (III) (ii) of the Army Rules, 1954. The Division Bench of this Court had also the occasion to consider Rule 7(b) in **Ajit Kumar versus Union of India, CWP No.382 of 1992, decided on 20th September, 1994.** Their Lordships have interpreted Rule 7(b) as under:-

> **"The matter can also be examined in the context of Rule 7(b) of the Rules which provides that the disease resulting in invalidation and discharge of military personnel is deemed to have arisen in service in the absence of a note to the contrary. Once this rule is applied, it will have to be held that it is the service of the petitioner with the military that had caused the disease. This is, however, not to say that it is due to military service. The distinction between "due to military service" and arising during military service" has to be kept in view and appreciated. In the first case, a direct connection with the disease and the work done by the incumbent would be necessary, but not so in the other. Under the circumstances, even though the disease does not have its origin in the duty performed by the petitioner and is attributable to developments at his home, those developments by themselves are not the cause of the disease. The disease as noticed is caused by stress and strain affecting adversely the mental faculty of the petitioner. The stress and strain in such a situation is due to the inability of the petitioner to attend to those domestic problems which disability is, in turn, due to the present posting of the petitioner. Considered from this angle, the casual connection between the disease and the military service would, in our opinion, be sufficiently established in the instant case. It is also our considered view that it is not necessary in such a case to hold that the disease is attributable to the military service of the petitioner and it is enough if this service has directly or indirectly contributed to it.**

> **Then we can also not overlook the fact that we are dealing with a case of disability pension of a person who was otherwise hail and hearty, has rende4red service without any complaint, would now be left without any means of livelihood. In a situation like this, interpretation of rules should normally be beneficial and in favour of the claimant. This is also the mandate of Rule 4 of Entitlement Rules. In this view of the matter, we would hold that the casual connection, howsoever small or insignificant, would be enough to declare that the petitioner falls in the category of persons entitled to disability pension. "**

Similarly, the Division Bench of this Court after considering the Ajit Kumar versus Union of India's case, in **Baljit Singh versus Union of India and Another, C.W.P. No.738 of 1995, decided on 31.10.1995** has held as under:-

> **"From the above narration of the facts, certain facts are clear. At the time of entry in the military service, the petitioner was physically fit and did not suffer from any disease. He was found to be suffering from 'Neurosis' during the military service after he sustained the injury pointed out in the reply-affidavit of the respondents. In these circumstances, to say that the petitioner was afflicted with constitutional disease and not related to service, would be wrong. When he was physically fit while entering in the military service – there being no entry to this effect in the service record – it can legitimately be assumed that the disease is not only attributable to military service but was aggravated thereby. Almost similar question arose in Ajit Kumar vs. The Union of India, (C.W.P. No. 382/92, decided on September 20, 1994) wherein all the objections, being pressed into service in this case, were rejected."**

The Division Bench of Punjab and Haryana High Court has also considered Defence Instructions Rule 7(b) in **Surjit Singh versus Union**

of India and Another, 1994 (2) SLR and held that the disability pension shall be payable to armymen irrespective of whether disease occurred during duty or off duty so long as disease occurred while on rolls of Army.

The Single Judge of the Hon'ble Jammu and Kashmir High Court in **Col. M.L. Sethi (Retd.) and etc. v. Union of India and others, 1998 Lab.I.C. 3625** after taking note of the judgments of the various High Courts had concluded as under:-

> **"(i) That in case no mention is made regarding the disease or disablement at the time of entry in service, then it is to be presumed that the disability occurred during the course of service.**
>
> **(ii) The disability was on account of stress and strains of army service.**
>
> **(iii) If competent authority is to disagree with the finding recorded by the medical board vis-a-vis the disability or the percentage thereof, the matter should be referred to the Medical Board.**
>
> **(iv) Delay in approaching the Court is irrelevant."**

The upshot of the above discussion is that the petitioner had contracted the disease "Thoracic Outlet Syndrome (Right)" while serving in the Army and is directly attributable to and aggravated to conditions of service. The disability of the petitioner was to be assessed in the first Medical Board convened on 27th June, 1991. The petitioner will be deemed to be put under category 13 (III) (ii) of the Army Rules, 1954.

The petitioner's disability had been assessed at 20% (Permanent) by the Medical Board held on 6th June, 2001 and the same is attributable to the conditions of service since the same had been contracted in service.

Accordingly, this petition is allowed. Annexure P-1, dated 3rd October, 2001 is quashed and set aside. The respondents are directed to pay the disability pension to the petitioner with arrears in terms of Rule 7(b) with effect from 1st January, 2001 with interest at the rate of 9 per cent. No order as to costs.

(Rajiv Sharma)
Judge

July 18, 2007.
(sck).